

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY**

**Call to Order:** By **VICE CHAIRMAN JEFF LASZLOFFY**, on January 24, 2001 at 8:10 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. Darrel Adams (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Jeff Mangan (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Ken Peterson (R)  
Rep. Diane Rice (R)  
Rep. Bill Thomas (R)  
Rep. Merlin Wolery (R)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: **HB 229 - 1-16-01**  
**HB 252 - 1-18-01**  
**HB 278 - 1-18-01**

**HB 276 - 1-18-01**Executive Action: **HB 196 - DPAA 11-9****HB 216 - DPAA 12-8****HEARING ON HB 229**

**Sponsor: Rep. Ken Peterson, HD 20, Billings** said the Bill seeks to amend and add to the Driving While Intoxicated Law prohibition to driving while under the influence of dangerous drugs. These are drugs that are listed in the statutes of the State of Montana. There are five schedules that are described in 50-21-101. There are serious problems on the highways and roads in Montana whether the drivers are under the influence of alcohol, under the influence of drugs, people driving without driver's licenses, or people driving without insurance. We need to take strong positions to make sure they stay off the roads. The fiscal note indicates some cost in the first year. This is to get the department up to speed to get officers trained.

**{Tape : 1; Side : A; Approx. Time Counter : 0 - 9.3}**

**Proponents: Harold Hanser, Attorney, Billings**

**Pam Bucy, Assistant Attorney General, Helena** said this is an opportunity to train law enforcement officers to recognize the clues of drug use in the same way they are trained to recognize clues of alcohol impairment. This Bill recognizes that current Montana law seriously lacks in the area of enforcing driving under the influence of drug violations.

**Charles Brooks, Billings**

**Opponents: None**

**Questions from Committee Members and Responses: Reps. Newman, Gallus, Clark, Adams, Noennig, Eggers, Shockley to Mr. Hanser and Ms. Bucy for clarification.**

**{Tape : 1; Side : A; Approx. Time Counter : 9.3 - 29.8}**

**{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 13.4}**

**Closing by Sponsor: Rep. Peterson closed the Hearing on HB 229.**

**{Tape : 1; Side : B; Approx. Time Counter : 13.4 - 16.5}**

**Chairman Shockley took over the meeting at this point.**

**HEARING ON HB 252**

**Sponsor:** Rep. Bob Davies, HD 27, Bozeman said, at the present time, a single district judge in any district of the state can overturn a statute passed by the legislature and signed by the Governor. He can issue a stay on that law and thus render it null and void. Then the law is not in effect. The opinion can be appealed but that process can take a long time and in most cases by the time the appeal is heard the law is forgotten and any momentum it might have had is gone. A single judge could not have that power. His power should not extend throughout the whole state in matters of fundamental law. The decision remains totally in the judiciary, so the so-called doctrine of judicial supremacy does not enter into this matter. He proposes to delay a district court stay on a decision until the time for filing an appeal has ended. If no appeal is filed the court's decision will go into effect. If an appeal is filed the decision will not take effect until the Supreme Court has decided the case. This applies only to decisions that are based on constitutional grounds.

**Proponents:** None

**Opponents:** Al Smith, Executive Director, Montana Trial Lawyers' Association said there are procedures in effect now that parties can request a stay of execution of a judgement or order. He asked how this change in the constitution would work with Rule 7. Rule 7 has specific provisions for protection of both parties pending an appeal. There is nothing here in this constitutional provision that would give us any indication whether or not this is supposed to work. It essentially over-rules Rule 7 and gives us no other procedures on how to protect the interest of the party. How would it effect citizens?

**Beth Brenneman, Legal Director, ACLU of Montana**

***{Tape : 1; Side : B; Approx. Time Counter : 16.5 - 28}***

***{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 18.5}***

**Questions from Committee Members and Responses:** Reps. Harris, Newman, Gallus, Peterson, Clark, to Rep. Davies for clarification.

**Rep. Shockley asked Rep. Davies** if his concern is that one district court judge will make a decision that has remedial ramifications all over the state and that he really isn't concerned with a constitutionally based decision which will only impact the party of a lawsuit? **Rep. Davies** said yes.

**Closing by Sponsor:** Rep. Davies closed the Hearing on HB 252.

***{Tape : 2; Side : A; Approx. Time Counter : 18.5 - 20}***

**HEARING ON HB 278**

**Sponsor:** Rep. Tim Callahan, HD 43, Great Falls said he brings this Bill at the request of the Juvenile Probation Officers' Association. The Bill clarifies some issues and does some housekeeping. One of the major things it does is give the County Attorney's Office additional discretion in filing charges with the District Court. **EXHIBIT(juh19a01)** was explained.

**Proponents:** Bob Peake, Chief, Havre; Montana Juvenile Probation Officers' Association.

***{Tape : 2; Side : A; Approx. Time Counter : 20 - 29.5}***

**Opponents:** None

**Informational Witness:** Matthew Robertson, Department of Corrections said the Department has varied positions on this Bill. The Department would strenuously oppose the Bill, as drafted, because it would jeopardize funding from the JJDP programs in the office of Corrections' programming with the Department of Justice on federal levels because it would allow handcuffing to rails. If the amendments proposed by the Sponsor are passed by the Committee or by the Legislature, then they would, in part, support the Bill.

**Questions from Committee Members and Responses:** Reps. Newman, Gutsche, Hurdle, Noennig, to Rep. Callahan and Mr. Robertson, Mr. Peake for clarification and explanations.

**Rep. Shockley** said in HB 146, an amendment went back to the statute as it now exists and it states that a misdemeanor offender who is a juvenile may be incarcerated at Pine Hills if the judge thinks it's necessary and if he is supported by a mental health professional. He asked the Sponsor, **Rep. Callahan** if there should be another provision and another way to put a misdemeanor offender in Pine Hills, which is already full? **Rep. Callahan** said his understanding is, when he drafted this Bill, the Department of Corrections, in HB 146, said no misdemeanor offenders could be placed at Pine Hills. There have been some changes made to HB 146. He would like to work with the Department and the other people involved to have legislation that will make sense and will work for the District Courts.

**Closing by Sponsor:** Rep. Callahan closed the Hearing on HB 278.

*{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 27.2}*

**HEARING ON HB 276**

**Sponsor:** Rep. Ken Peterson, HD 20, Billings said this Bill deals with revision of the justice courts in first class counties at the option of the County Commissioners. It would change the justice courts in first class counties only and will be called a "county court". If an appeal is taken to the District Court, the only thing reviewed would be the record and the law as it applies to that record. It would be more efficient. There is no fiscal impact as the judges would be paid on the local level.

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**Proponents:** Larry Herman, Justice of the Peace, Yellowstone County **EXHIBIT**(juh19a02)

*{Tape : 3; Side : A; Approx. Time Counter : 6 - 19}*

**Opponents:** Robert Throssell, representing Montana Magistrates' Association said the Magistrates oppose this Bill on a policy reason simply because it removes from the justice system judges that are in place in the state. There is the option for the county as there is the option now for the larger municipalities to implement a similar municipal court.

**Questions from Committee Members and Responses:** Reps. Clancy, Eggers, Noennig, Mangan, Gallus, Shockley to Judge Herman and Mr. Throssell.

*{Tape : 3; Side : A; Approx. Time Counter : 19 - 29.4}*

*{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 2.9}*

**Closing by Sponsor:** Rep. Peterson closed the Hearing on HB 276.

**EXECUTIVE ACTION ON HB 196**

**Motion:** REP. ADAMS moved that HB 196 DO PASS. #1

**Discussion:** Reps. Younkin, Wolery, without objection, Rep. Michelle Lee concerning fiscal note and amendments.

**Motion:** REP. EGGERS moved that HB 196 BE AMENDED. #2  
**EXHIBIT**(juh19a03)

Discussion: Reps. Eggers

Vote: The Eggers amendment carried unanimously 20-0.

Motion: REP. NEWMAN moved that HB 196 DO PASS AS AMENDED. #3

Discussion: Reps. Laszloffy, Gallus, Shockley, Harris, Newman, Clark, Noennig to Rep. Lee for clarification.

*{Tape : 3; Side : B; Approx. Time Counter : 2.9 - 26.7}*

*{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 2.6}*

Motion: REP. LASZLOFFY moved that HB 196 BE POSTPONED until a revised Fiscal Note is available. Rep. Laszloffy withdrew his motion.

Discussion: Reps. Younkin, Hurdle, Gallus, Newman, Holden, Shockley, Eggers,.

Vote: Motion #3, HB 196 DPAA carried 11-9 with Reps. Shockley, Laszloffy, Adams, Clancy, Holden, Noennig, Peterson, Thomas and Younkin voting no.

*{Tape : 4; Side : A; Approx. Time Counter : 2.6 - 12.2}*

EXECUTIVE ACTION ON HB 216

Motion: Rep. Laszloffy moved that HB 216 be reconsidered. #4

Discussion: Reps. Newman, Shockley, Mangan, Gutsche to Mr. MacMaster for explanation.

Mr. MacMaster said the Bill was amended and then there was a DPAA motion and that motion failed. That puts the Bill in limbo. The proper motion now would be that the Bill Do Pass. Technically, a motion and vote would have to be made to reconsider the amendments.

Discussion: Rep. Hurdle said there was a move to Table this Bill and that motion failed, 3-14, then after the motion to Table failed, there was a vote on the Bill and that vote killed the Bill 7-11.

Further Discussion: Rep. Noennig said the Bill Do Pass did not pass and the motion to Table did not pass, regardless of which order they were in, the Bill, at the prerogative of the Chair

is open to Do Pass again at any time, without a motion to reconsider because no positive action has been taken on the Bill.

Motion/Vote: REP. CLARK moved that HB 216 BE TABLED. #5 Motion failed 7-13 with Reps. Shockley, Laszloffy, Adams, Clancy, Curtiss, Harris, Holden, Noennig, Peterson, Rice, Thomas, Wolery and Younkin voting no.

*{Tape : 4; Side : A; Approx. Time Counter : 12.2 - 24.9}*

Motion: REP. YOUNKIN moved that HB 216 DO PASS. #6

Motion: Rep. Gallus moved to strip off his amendmment. #7

Discussion: Rep. Gallus explained his amendment.

*{Tape : 4; Side : A; Approx. Time Counter : 24.9 - 29}*

*{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 0.6}*

Vote: The Gallus motion carried 16-4 with Reps. Hurdle, Mangan, Peterson, and Wolery voting no.

Discussion: Rep. Gutsche explained what her amendments did and said she was not willing to take them off.

Motion: Rep. Laszloffy said with all due respect to Rep. Gutsche, moved to take her amendments off the Bill. #8

Discussion: Rep. Noennig to Rep. Gutsche for an explanation of her amendment.

Vote: Motion #8 carried 12-8 with Reps. Clark, Eggers, Gallus, Gutsche, Harris, Hurdle, Mangan and Peterson voting no.

Motion/Vote:: Rep. Laszloffy moved Rep. Himmelberger's amendments #9 **EXHIBIT**(juh19a04) Motion carried 16-4 with Reps. Clark, Gutsche, Hurdle and Mangan voting no.

Discussion: Reps. Newman, Clark, Laszloffy, Peterson, Mangan, Adams, Holden, Curtiss.

Motion/Vote: REP. CURTISS moved that HB 216 DO PASS AS AMENDED. #10. Motion carried 12-8 with Reps. Shockley, Clark, Eggers, Gallus, Gutsche, Hurdle, Mangan, Newman voting no.

Rep. Shockley made an announcement to the Committee:

He received a message from a lady in his county, not a constituent, that he said "if women are too stupid to carry a restraining order in their hands they deserve what they get - please verify this". He called the lady back two days ago and again this morning and she asserts that these are his words and she said that Rep. Newman and another person were there. He spoke to Rep. Newman and asked what he remembered of their conversation. Rep. Newman said he remembered the conversation but not exactly what Rep. Shockley said. Rep. Shockley said if he said this he didn't mean it and if he said it, it was wrong but he does not believe he said it. He was discussing with Rep. Newman the infamous HB 213 and, in his opinion, the complicity of the police and what happened. He does not think the police would have saved Ms. Sullivan's life. He thinks the cause of Ms. Sullivan's death was Mr. Sullivan and he was offended the police would come in here and not be as candid as he believes they should have been. He said something to Rep. Newman along those lines and there was a third person there. Rep. Shockley said "if the woman was smart she'd be alive today if she had the TRO with her and recorded it or if she hadn't been stupid she would have the TRO with her and she'd be alive today" or words to that effect.

Another Representative said something to her on the Internet and another Representative came to him with a letter saying that he beat his wife, or words to that effect, Rep. Shockley said he has been married for 32 years and assured the committee that has never happened.

He does not like things to be under the table but out in the open. If he said anything close to this he apologizes. It wasn't accurate and he mis-spoke.

The police said they knew there was a TRO because they called Silver Bow County but they said they hadn't served the person against which the order was in effect. Therefore, they couldn't keep him a distance from her. Mr. Sullivan was a Superintendent of a Catholic school in Silver Bow County, state of Montana. He believes the policeman did not really believe that he would harm Mrs. Sullivan so they did not do what they could have done. First, the service should have been with the TRO, that is standard police procedure, but paper work does not always move very well. However, if the Missoula people had faxed the TRO from Silver Bow County, they could have served Mr. Sullivan. That is not particularly relevant but that is what they were discussing at the time this came up, so I don't know why somebody is making these phone calls.

If anybody would like to question Rep. Shockley, he is available and said Rep. Newman had nothing to do with any of this.



Rep. Clark said, when we are here and when we leave here, we represent the highest ideal and it behooves everyone to be very cautious about what is said, even in a casual way and how that might get taken.

Adjournment: 12:00 P.M.

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REP. JIM SHOCKLEY, Chairman

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MARY LOU SCHMITZ, Secretary

JS/MS

**EXHIBIT** (juh19aad)